



[7590-01-P]

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of
Entergy Nuclear Operations Inc.

) Docket Nos.: 50-333; 50-313; 50-368;
) 50-416; 50-247; 50-286; 50-255; 50-293;
) 50-458; 50-271; 50-382
)
) License Nos.: DPR-59; DPR-51; NFP-6;
) NFP-29; DPR-26; DPR-64; DPR-20;
) DPR-35, NFP-47, DPR-28, NFP-38
)
) EA-10-090, EA-10-248, EA-11-160

[NRC-2012-0028]

CONFIRMATORY ORDER MODIFYING LICENSE
(EFFECTIVE IMMEDIATELY)

I

Entergy Nuclear Operations, Inc. (Entergy or licensee) is the holder of Operating License Nos. DPR-59, DPR-51, NFP-6, NFP-29, DPR-26, DPR-64, DPR-20, DPR-35, NFP-47, DPR-28, and NFP-38, issued by the U.S. Nuclear Regulatory Commission (NRC or the Commission) pursuant to *Title 10 of the Code of Federal Regulations* (10 CFR) Part 50. The licenses authorize operation of the James A. FitzPatrick Nuclear Power Plant, Arkansas Nuclear One Units 1 & 2, Grand Gulf Nuclear Station Unit 1, Indian Point Nuclear Generating Units 2 & 3, Palisades Nuclear Plant, Pilgrim Nuclear Power Station, River Bend Station, Vermont Yankee Nuclear Power Station and Waterford Steam Electric Station Unit 3 (collectively, the Facilities), in accordance with conditions specified therein. The Facilities are located in the vicinity of the following cities: Oswego, New York; Russellville, Arkansas; Vicksburg, Mississippi; New York City, New York; South Haven, Michigan; Boston, Massachusetts; Baton Rouge, Louisiana; Brattleboro, Vermont; and New Orleans, Louisiana; respectively.

This Confirmatory Order is the result of an agreement reached during an ADR mediation session conducted on November 9, 2011, in the NRC Region I office in King of Prussia, Pennsylvania.

II

On July 1, 2009, February 5, 2010, and April 8, 2010, the NRC Office of Investigations (OI) initiated separate investigations (OI Case Nos. 1-2009-041, 1-2010-019, and 1-2010-031, respectively) at Entergy's James A. FitzPatrick Nuclear Power Plant facility (FitzPatrick). Based on the evidence developed during these investigations, the NRC concluded that FitzPatrick radiation protection technicians (RPTs), on occasions between 2006 and 2009, failed to: (1) test required individuals for respirator fit in accordance with the requirements specified in 10 CFR Section 20.1703 and site procedures; (2) maintain accurate documentation of completed respirator fit tests in accordance with the requirements of 10 CFR 50.9; (3) perform and/or accurately document in accordance with site procedures required by Technical Specifications (TS) and 10 CFR 50.9, independent verification of Drywell Continuous Atmospheric Monitoring System valve positions after the valves were manipulated; (4) document a personal contamination event in accordance with site procedures required by TS; (5) perform a contamination survey in accordance with site procedures required by TS, prior to removing an item from the radiologically controlled area; and (6) perform daily radiological surveys in accordance with 10 CFR 20.1501(a).

In a letter dated September 8, 2011, the NRC provided Entergy the results of the investigations, informed Entergy that escalated enforcement action was being considered for apparent violations identified during the investigations, and offered Entergy the opportunity to attend a predecisional enforcement conference or to participate in ADR.

III

In response to the September 8, 2011 NRC letter, Entergy requested ADR. Consequently, on November 9, 2011, the NRC and Entergy met in an ADR session mediated by a professional mediator, arranged through Cornell University's Institute on Conflict Resolution. ADR is a process in which a neutral mediator with no decision-making authority assists the parties in reaching an agreement on resolving any differences regarding the dispute. During that ADR mediation session, an agreement in principle was reached. This Confirmatory Order is the result of that agreement, the elements of which consisted of the following:

1. The NRC and Entergy agree on the facts as set forth in the NRC's September 8, 2011, letter to Entergy, the violations described therein, and willfulness of some of the violations, including deliberate actions by one of the RPTs.
2. The NRC agrees that Entergy, upon receiving the information from the NRC regarding these issues, immediately conducted a comprehensive investigation into the issues. Entergy also ensured affected staff were properly re-tested for respirator fit and determined there were no previous radiological uptakes for the time period in question.
3. In addition, the NRC acknowledges that, prior to the ADR session, Entergy took a number of corrective actions in response to the violations identified at the FitzPatrick site, so as to preclude the occurrence of similar violations in the future. These actions included:
 - A. Completed Corrective Actions affecting the FitzPatrick site:
 - a. Actions to address Individual Accountability:

- i. Reviewed and adjudicated the unescorted access authorization with individuals involved in the respirator fit test issue and subsequent radiation protection (RP) performance issues.
 - ii. Completed disciplinary reviews/actions against the individuals involved with the conduct of or the receipt of a respirator qualification without performance of a quantitative fit test and subsequent RP performance issues.
 - iii. Conducted a series of station and small group meetings between Entergy senior management and staff to reinforce station expectations with regard to raising issues via available station processes and procedure compliance.
- b. Actions to improve RP Procedures/Processes, and adherence to standards:
- i. Completed actions to address identified RP respirator test deficiencies as documented in condition report CR-JAF-2009-02298. An apparent cause evaluation was performed to identify the causes and corrective actions.
 - ii. Increased management oversight of RP activities, as a corrective action implemented as a result of CR-JAF-2010-1419, which identified an adverse trend in RP Department performance. Management provided coaching and other training to other RP supervision and personnel to enhance effectiveness.
 - iii. Modified the mask fit test procedure to require individuals being tested to sign a statement affirming that the mask fit test was performed. Management also reviewed and modified the operation of the portable

fit test machine.

- iv. Required RP technicians to complete focused training to remediate the work practices identified during the extent of condition review and fact finding and to bring them into alignment with station procedures and expectations.
- c. Actions to identify the extent that procedure compliance/safety culture issues may exist in other areas:
 - i. Conducted a review of other processes that could be affected by single act vulnerabilities.
 - ii. Completed focused crew assessments regarding departments outside of RP.
 - iii. Performed an extent of condition review by an independent reviewer regarding activities outside of RP.
 - iv. Completed an independent safety culture assessment, and developed and completed actions to enhance the safety culture at FitzPatrick.
 - v. Implemented cross-functional observations by managers of other departments with a focus on procedure adherence and enforcement of standards in the conduct of work.
- d. Performed an effectiveness review of corrective actions taken to enhance procedural compliance and related work practices in the FitzPatrick RP Department. Additionally, Entergy Quality Assurance personnel performed a minimum of two observations of each shift RPT to confirm that the technicians performed assigned tasks in accordance with applicable procedures.

B. Completed Corrective Actions affecting the Entergy Nuclear Fleet:

- a. Completed safety culture assessments at each of Entergy's nine commercial nuclear power plants in 2009.
 - b. Conducted training for Entergy nuclear fleet personnel, including personnel at FitzPatrick, on the requirements of 10 CFR 50.5 and 50.9. Supervisors and above, as well as those non-supervisors who have responsibility for communicating with the NRC, received instructor-based training. Others received computer-based training.
 - c. Provided training to detect and prevent retaliation (based on the requirements of 10 CFR 50.7) to supervisors and above at FitzPatrick and other fleet sites.
 - d. Entergy's Chief Nuclear Officer sent a message to the entire Entergy nuclear workforce, via electronic mail, informing them of the underlying misconduct related to the violations and stressing the importance of integrity.
4. As part of the settlement agreement in principle, Entergy also agreed to take additional actions to ensure that the effectiveness of corrective actions previously taken, and to ensure that lessons learned from these events, is extended to the Entergy fleet and to the industry:
- A. Entergy will review its existing fleet-wide general employee training to ensure adequate coverage of the lessons learned from the event that formed the basis for the Confirmatory Order (CO), regarding both procedural compliance and the requirement to maintain complete and accurate records in accordance with 10 CFR 50.9. Entergy will document the results of this review of the general employee training within 60 days after the issuance of the CO. If this review reveals a need to

revise the general employee training, Entergy will make the appropriate revisions within 180 days of the date of the CO.

- B. Entergy will prepare a case study about the event that formed the basis of the CO, highlighting the role of those who had the opportunity to detect, report, and prevent the misconduct, as well as on the actions of the individuals who engaged in the misconduct. The Site Vice President or General Manager for Plant Operations at each of Entergy's nine commercial nuclear power plants will present the case study during two station-wide meetings to ensure that both day and night shift personnel will have the opportunity to attend. Entergy will complete these presentations within 180 days of the date of the CO. Entergy will make this case study available for NRC review before conducting these station-wide meetings.
- C. Within 90 days of the date of the CO, Entergy will add a commitment to the commitment tracking system to maintain the safety culture monitoring processes as described in NEI 09-07 "Fostering a Strong Nuclear Safety Culture," or similar processes, at Entergy's nine commercial nuclear power plants.
- D. Within 90 days of the date of the CO, Entergy will review its procedure EN-QV-136, Nuclear Safety Culture Monitoring, which implements the safety culture monitoring processes in NEI 09-07 "Fostering a Strong Nuclear Safety Culture," to determine whether the procedure (if that procedure had been in effect at the time of the violations) would have detected the safety culture weaknesses that led to the misconduct that formed the basis for the CO. If the review indicates that the implementation of that procedure may not have detected the weaknesses, Entergy will develop enhancements to the NEI process that would improve the ability to

detect those weaknesses and revise the Entergy procedure accordingly. Entergy will complete this procedure revision, if needed, within 120 days of the completion of that review. Additionally, within 30 days after revising its procedure, Entergy will provide the results of its review to NEI for its consideration in revising NEI document 09-07 "Fostering a Strong Nuclear Safety Culture." Entergy will make the results of this review available for NRC review.

- E. Within 360 days of the date of the CO, Entergy will deliver a presentation to Regional Utility Groups (RUG) or Plant Managers Meetings at Regions I, II, III, and IV, which will discuss the events that led to this CO, the lessons learned, and actions taken. If any of the RUGS or Plant Managers Meetings schedules will not support completion of this action, Entergy will contact the Regional Administrator, Region I, to provide notice and to resolve the scheduling issue.

- F. Within 360 days of the date of the CO, Entergy will develop an assessment plan and conduct an assessment consistent with that plan of the RP Departments at the nine Entergy commercial nuclear power plants. That assessment will review the rigor with which members of the RP Departments perform and document routine department activities. If those assessments identify performance or documentation issues, Entergy will enter those issues into its corrective action programs. Prior to the conduct of the first assessment, Entergy will make the assessment plan available to the NRC for review.

- G. Within 30 days of completion of all of the actions described in items 4A-F, Entergy will send the NRC a letter informing the Commission that all actions are complete, to facilitate NRC confirmatory reviews.
5. Entergy also agreed to notify the senior resident inspectors at each of the Entergy sites, regarding the dates and times of the site-wide case study presentation meetings, described above in Item 4.B, which will be conducted at their respective sites.

In light of the actions that Entergy took as noted in Item 3, as well as the additional actions Entergy committed to as described in Items 4 and 5, the NRC agreed to not issue a civil penalty for the violations that are the subject of this ADR.

On January 20, 2012, the Licensee consented to issuing this Order with the commitments, as described in Section V below. Entergy further agreed that this Order is to be effective upon issuance and that it has waived its right to a hearing.

IV

Since the licensee has agreed to take additional actions to address NRC concerns, as set forth in Item III above, the NRC has concluded that its concerns can be resolved through issuance of this Confirmatory Order.

I find that Entergy's commitments as set forth in Section V are acceptable and necessary and conclude that with these commitments the public health and safety are reasonably assured. In view of the foregoing, I have determined that public health and safety require that Entergy's commitments be confirmed by this Order. Based on the above and Entergy's consent, this Confirmatory Order is immediately effective upon issuance.

Accordingly, pursuant to Sections 104b, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Part 50 IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT:

- A. Entergy will review its existing fleet-wide general employee training to ensure adequate coverage of the lessons learned from the event that formed the basis for the CO, regarding both procedural compliance and the requirement to maintain complete and accurate records in accordance with 10 CFR 50.9. Entergy will document the results of this review of the general employee training within 60 days after the issuance of the CO. If this review reveals a need to revise the general employee training, Entergy will make the appropriate revisions within 180 days of the date of the CO.

- B. Entergy will prepare a case study about the event that formed the basis of the CO, highlighting the role of those who had the opportunity to detect, report, and prevent the misconduct, as well as on the actions of the individuals who engaged in the misconduct. The Site Vice President or General Manager for Plant Operations at each of Entergy's nine commercial nuclear power plants will present the case study during two station-wide meetings to ensure that both day and night shift personnel will have the opportunity to attend. Entergy will complete these presentations within 180 days of the date of the CO. Entergy will make this case study available for NRC review before conducting these station-wide meetings, and will notify the senior

resident inspectors at each of the Entergy sites regarding the dates and times of these meetings at their respective sites.

- C. Within 90 days of the date of the CO, Entergy will add a commitment to the commitment tracking system to maintain the safety culture monitoring processes as described in NEI 09-07 "Fostering a Strong Nuclear Safety Culture," or similar processes, at Entergy's nine commercial nuclear power plants.
- D. Within 90 days of the date of the CO, Entergy will review its procedure EN-QV-136, Nuclear Safety Culture Monitoring, which implements the safety culture monitoring processes in NEI 09-07 "Fostering a Strong Nuclear Safety Culture," to determine whether the procedure (if that procedure had been in effect at the time of the violations) would have detected the safety culture weaknesses that led to the misconduct that formed the basis for the CO. If the review indicates that the implementation of that procedure may not have detected the weaknesses, Entergy will develop enhancements to the NEI process that would improve the ability to detect those weaknesses and revise the Entergy procedure accordingly. Entergy will complete this procedure revision, if needed, within 120 days of the completion of that review. Additionally, within 30 days after revising its procedure, Entergy will provide the results of its review to NEI for its consideration in revising NEI document 09-07 "Fostering a Strong Nuclear Safety Culture." Entergy will make the results of this review available for NRC review.
- E. Within 360 days of the date of the CO, Entergy will deliver a presentation to Regional Utility Groups (RUG) or Plant Managers Meetings at Regions I, II, III, and IV, which will discuss the events that led to this CO, the lessons learned, and actions taken. If

any of the RUGS or Plant Managers Meetings schedules will not support completion of this action, Entergy will contact the Regional Administrator, Region I, to provide notice and to resolve the scheduling issue.

F. Within 360 days of the date of the CO, Entergy will develop an assessment plan and conduct an assessment consistent with that plan of the RP Departments at the nine Entergy commercial nuclear power plants. That assessment will review the rigor with which members of the RP Departments perform and document routine department activities. If those assessments identify performance or documentation issues, Entergy will enter those issues into its corrective action programs. Prior to the conduct of the first assessment, Entergy will make the assessment plan available to the NRC for review.

G. Within 30 days of completion of all of the actions described in items A-F, Entergy will send the NRC a letter informing the Commission that all actions are complete, to facilitate NRC confirmatory reviews.

The NRC Region I Regional Administrator, may, in writing, relax or rescind any of the above conditions upon demonstration by Entergy of good cause.

VI

Any person adversely affected by this Confirmatory Order, other than Entergy, may request a hearing within 20 days of its publication in the *Federal Register*. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear

Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at hearing.docket@nrc.gov, or by telephone at 301-415-1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals/apply-certificates.html> system requirements for accessing the E-Submittal server are detailed in NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. Participants may attempt to use other software not listed on the Web site, but

should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange (EIE), users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>.

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek

assistance by contacting the NRC Meta System Help Desk through the “Contact Us” link located on the NRC Web site at <http://www.nrc.gov/site-help/e-submittals.html>, by e-mail at MSHD.Resource@nrc.gov, or by a toll-free call at (866) 672-7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) first class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at <http://adams.nrc.gov/ehd/>, unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve

the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

If a person (other than Entergy) requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Confirmatory Order and shall address the criteria set forth in 10 C.F.R. 2.309(d) and (f).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section V above shall be final 20 days from the date this Confirmatory Order is published in the *Federal Register* without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section V shall be final when the extension expires if a hearing request has not been received.

A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF
THIS ORDER.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

William M. Dean
Regional Administrator
NRC Region I

Dated this 26th day of January 2012

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